Filed 10/27/16 P. v. Roddy CA2/3

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>MICHAEL RICHARD RODDY,<br><br>Defendant and Appellant. | B264891<br><br>(Los Angeles County Super. Ct. No. GA076631) |

APPEAL from an order of the Superior Court of Los Angeles County, Michael Villalobos, Judge. Reversed and remanded with directions.

Brad Kaiserman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez, Viet H. Nguyen and Andrew Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Michael Richard Roddy appeals from the denial of his petition for resentencing under Proposition 47, the Safe Neighborhoods and Schools Act. In 2009, Roddy pled guilty to second degree burglary after he attempted to purchase a cup of coffee at a Starbucks with counterfeit currency. In June 2015, Roddy applied to have his felony conviction designated a misdemeanor under Penal Code section 459.5 (shoplifting), which was enacted pursuant to Proposition 47.[1] The trial court denied the petition on the ground that Roddy had entered the Starbucks with the intent to commit *forgery*, not the intent to commit *larceny*, as section 459.5 requires. We conclude that Roddy is entitled to relief under Proposition 47, and thus we reverse.

***FACTUAL AND PROCEDURAL BACKGROUND***

On April 29, 2009 at approximately 6:00 p.m., Roddy entered a Starbucks and attempted to purchase a cup of coffee with a counterfeit twenty-dollar bill. He was charged with second degree commercial burglary (§ 459), that is, "enter[ing] a commercial building occupied by Starbucks with the intent to commit larceny and any felony."[2] On May 14, 2009, Roddy pled guilty, was placed on formal probation for three years, and was ordered to serve 150 days in county jail.

On November 4, 2014, voters enacted Proposition 47, which reduced to misdemeanors certain possessory drug offenses and thefts of property valued at less than $950. (See *People v. Hall* (2016) 247 Cal.App.4th 1255, 1260.) Proposition 47 also created a

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[1] All further statutory references are to the Penal Code unless otherwise stated.

[2] He was also charged with forgery (§ 476) but that charge was dismissed.

new resentencing provision, section 1170.18, under which persons previously convicted of felonies that were reclassified as misdemeanors, who have completed their sentences, may petition to have their felony convictions redesignated as misdemeanors. (§ 1170.18, subd. (f).)

On June 15, 2015, Roddy filed a section 1170.18 petition for resentencing, seeking to have his burglary conviction designated a misdemeanor pursuant to the newly-enacted section 459.5. Section 459.5 redefined as misdemeanors certain burglaries that fit the definition of "shoplifting"— that is, "entering a commercial establishment with *the intent to commit larceny* while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($ 950)." (§ 459.5, subd. (a), italics added.)

The trial court denied the petition on the ground that Roddy's criminal activity did not "fall within the parameters" of section 459.5 because "the crime here was an intent to commit a forgery not a larceny." Roddy timely appealed.

## *CONTENTIONS*

Roddy contends he was eligible for resentencing under Proposition 47 because "the intent to commit larceny" in section 459.5 must be read as "the intent to commit theft," and using counterfeit money to make a purchase qualifies as theft. Respondent argues that "the intent to commit larceny" is narrower than "the intent to commit theft," and here, Roddy did not attempt to commit larceny.

## *DISCUSSION*

This appeal turns on the interpretation of the term "larceny" in section 459.5. The interpretation of a statute is

subject to de novo review on appeal. (See *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916.) In construing a voter initiative, "we apply the same principles that govern statutory construction. [Citation.]" (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) "[W]e begin with the text as the first and best indicator of intent. [Citations.]" (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 321.) We first look " 'to the language of the statute, giving the words their ordinary meaning.' [Citation.]" (*People v. Rizo*, *supra*, at p. 685.) And we construe the statutory language "in the context of the statute as a whole and the overall statutory scheme. [Citation.]" (*Ibid.*) " 'If the text is ambiguous and supports multiple interpretations, we may then turn to extrinsic sources such as ballot summaries and arguments for insight into the voters' intent. [Citations.]' " (*Kwikset Corp. v. Superior Court*, *supra*, at p. 321.)

According to respondent, the voters intended section 459.5 to incorporate the "common understanding" of shoplifting, that is, a trespassory taking of property from a commercial establishment.[3] Respondent disputes Roddy's contention that "larceny" should be read broadly as "theft," and argues that had the voters intended section 459.5 to encompass all kinds of theft, "they could have used the term 'theft' instead of the term 'larceny' in section 459.5." Respondent further argues that Roddy's

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[3] The issue of whether the definition of shoplifting in section 459.5 requires an intent to commit larceny or theft of any kind is pending before the California Supreme Court. (See, e.g., *People v. Gonzales* (2015) 242 Cal.App.4th 35, review granted February 17, 2016, S231171; *People v. Vargas* (2016) 243 Cal.App.4th 1416, review granted March 30, 2016, S232673.)

criminal conduct did not involve larceny and, therefore, he was not eligible for resentencing.

We first address the contention that the voters intended to limit section 459.5 to the "common understanding" of shoplifting. The voters did not leave "shoplifting" undefined or define it by reference to the common understanding of that term. Rather, section 459.5 defines "shoplifting" to mean entry into a commercial establishment during regular business hours with the "intent to commit larceny" where the value of the property taken or intended to be taken does not exceed $950. Although respondent urges us to consider the ballot materials in interpreting the meaning of the term "larceny," respondent does not point to any ambiguity in the statute that would allow us to do so. (See *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1100 [" ' "If there is no ambiguity in the language of the statute, 'then . . . the plain meaning of the language governs.' " [Citation.]' "].)

We must construe "larceny" in accordance with its technical, legal definition. (§ 7, subd. (16) ["technical words and phrases . . . must be construed according to such peculiar and appropriate meaning."].) Although "[t]he common law defined larceny as the taking and carrying away of someone else's personal property, by trespass" (*People v. Williams* (2013) 57 Cal.4th 776, 782), in 1927, the Legislature amended section 484, which consolidated larceny, embezzlement, and obtaining property by false pretenses into the single crime of "theft." (*People v. Davis* (1998) 19 Cal.4th 301, 304.) Section 490a, which was enacted at the same time, provides that "any law or statute . . . [that] refers to or mentions larceny, embezzlement, or stealing . . . shall hereafter be read and interpreted as if the word 'theft' were substituted therefor."

We presume the electorate was aware of existing law—including section 490a—when it adopted Proposition 47. (See *John L. v. Superior Court* (2004) 33 Cal.4th 158, 171.) Further, the phrase "intent to commit larceny" in section 459.5 mirrors the phrase "intent to commit grand or petit larceny" in the general burglary statute (§ 459), and "the Legislature has indicated a clear intent [by enacting section 490a] that the term 'larceny' as used in the burglary statute should be read to include all thefts . . . ." (*People v. Nguyen* (1995) 40 Cal.App.4th 28, 31.) The statutory language here compels the same conclusion, and thus section 459.5's use of the term "larceny" must be read as "theft."

Respondent argues that applying section 490a to section 459.5 would "effect a change in the nomenclature or . . . change the language of [the] statute," a result that the Supreme Court has disapproved. (See *People v. Vidana* (2016) 1 Cal.5th 632 (*Vidana*).) The full quote from *Vidana*, from which respondent quotes only a portion, demonstrates that the court has *not*, in fact, disapproved of such a result, but only observed that section 490a has not yet been applied in that manner: "Although this court long ago said that 'the essence of section 490a is simply to effect a change in nomenclature without disturbing the substance of any law' [citations], it does not appear we have ever applied section 490a to effect a change in nomenclature or to change the language of any statute." (*Vidana*, *supra*, at p. 647.)

More importantly, in *Vidana*, the court explained that "[o]ur cases interpreting section 490a and the 1927 amendment to section 484 have repeatedly held that the legislation simplified the procedure of charging larceny, embezzlement, and false pretense, but did not change their elements. . . . [¶] . . . [¶] . . . 'The purpose of the consolidation was to remove the technicalities

that existed in the pleading and proof of these crimes at common law.' . . . [Citation.]" (*Vidana*, *supra*, 1 Cal.5th at pp. 641-642.) The court noted that although section 490a broadly provides that " '[w]herever *any* law or statute of this state refers to or mentions larceny, embezzlement, or stealing, said law or statute shall hereafter be read and interpreted as if the word 'theft' were substituted therefor,' " (*Vidana*, *supra*, at p. 641) the "literal application of section 490a would render many statutes nonsensical." (*Id.* at p. 647, italics added.) As an example, the court cited Vehicle Code section 10502 which provides that an " 'owner of a vehicle . . . which has been stolen or embezzled may notify the Department of the California Highway Patrol of the theft or embezzlement, but in the event of an embezzlement [the victim] may make the report *only* after having procured the issuance of a warrant for the arrest of the person charged with the embezzlement.' " (*Vidana, supra*, at p. 647 (italics added.).) The court made the point that, if "theft" were substituted for "embezzlement," this reporting requirement would be rendered nonsensical—the statute would then read " '[t]he owner . . . may notify the Department of the California Highway Patrol of the theft or theft, but in the event of a theft . . . .' " (*Ibid.*)

The court concluded that section 490a must be applied in conjunction with its legislative purpose, which was to " 'remove . . . technicalities . . . in the pleading and proof of [theft] crimes . . . .' " (*Vidana*, *supra*, 1 Cal.5th at p. 642.) Unlike Vehicle Code section 10502, which concerns the procedure a victim must follow when notifying authorities of a theft, section 459.5 sets forth the elements of the crime of shoplifting. Thus, applying section 490a to section 459.5 directly implements the purpose of section 490a: to remove technicalities in the pleading and proof of theft crimes

such that the prosecution need not " 'allege the particular type of theft involved, such as false pretenses, embezzlement, or larceny by trick and device.' [Citation.]" (*Vidana*, *supra*, at p. 643.) Accordingly, we conclude that section 490a requires that the term "larceny" in section 459.5 be read as "theft."

Here, Roddy's criminal conduct involved an attempt to commit a "theft by false pretenses," and, therefore, it comes within the terms of section 459.5. "[T]heft by false pretenses . . . requires only that '(1) the defendant made a false pretense or representation to the owner of property; (2) with the intent to defraud the owner of that property; and (3) the owner transferred the property to the defendant in reliance on the representation.' [Citation.]" (*People v. Williams*, *supra*, 57 Cal.4th at p. 787, italics omitted.) Roddy's criminal conduct falls within this definition because he intended to defraud Starbucks of a cup of coffee by making a false representation—that is, attempting to pay with a counterfeit twenty-dollar bill. As Roddy's criminal conduct involved an "intent to commit theft," and there is no dispute that the other elements of section 459.5 were met here, we conclude his burglary conviction qualifies as shoplifting under section 459.5.

We further note that our conclusion is consistent with the voters' overall intent in passing Proposition 47, which was to "[r]equire misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop 47, § 3, subd. (3), p. 70.) Roddy's attempted theft of a cup of coffee from Starbucks is precisely the type of nonserious, nonviolent crime to which Proposition 47 was intended to apply.

## *DISPOSITION*

The order denying Roddy's petition is reversed and the matter is remanded with instructions to grant the petition.

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EDMON, P. J.

We concur:

LAVIN, J.

STRATTON, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.